In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 242

APOSTOLOS SAMADJOPOULOS, PETITIONER

v.

NATIONAL WESTERN LIFE INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

On October 12, 1970, the Court invited the Solicitor General to express the views of the United States with respect to this case. Contrary to petitioner's position (Pet. 9), it is the conclusion of the United States that the decision of the Court of Appeals for the First Circuit does not conflict with Article XIV of the Treaty of Friendship, Commerce and Navigation between the United States and Liberia. Since the United States has no interest in or special experience with the other issues in the case, we limit our discussion to the treaty question.

409-675—70

1. The relevant facts, which are detailed in the opinions below and are set forth in the petition, may be stated briefly.

In 1967, members of the crew of the SS TROPIC BREEZE, a vessel of Liberian registry, filed in the United States District Court for the District of Puerto Rico a libel against the vessel based on claims for wages. Petitioner, the master of the TROPIC BREEZE, who also had a claim of wages, and respondent, the assignee of a mortgage on the vessel, were permitted to intervene in order to assert their respective claims. By stipulation of the parties, the sale of the vessel was postponed, and respondent agreed to satisfy all claims which the district court found to have priority over the mortgage.

The district court held that Liberian law governed the interpretation of petitioner's employment contract and that under that law the master of a vessel has the same maritime wage lien as seamen. Relying on *Lauritzen* v. *Larsen,* 345 U.S. 571, the court ruled that the law of the vessel's flag was controlling with respect to wage claims, and that accordingly the master's wage claim had priority over respondent's mortgage (see Pet. 27–28, 23–24).

The court of appeals reversed with respect to petitioner's claim for wages. It held that American law applied and that, in order to prevail, petitioner would have to show that he had a master's lien so as to come within the lien priorities in the Ship Mortgage Act, 46 U.S.C. 911–984. The court ruled that, under Ameri-

can law prior to 1968,[1] the master of an American vessel had no lien for his wages; that there was no reason to conclude that masters of foreign vessels had any greater rights but, even assuming that the master of a foreign ship had a maritime lien for wages under foreign law cognizable under principles of comity, this was not a preferred maritime lien and thus was subordinate to respondent's mortgage (Pet. 63–67).

2. Article XIV of the Treaty of Friendship, Commerce and Navigation between the United States and Liberia (U.S.T.S. No. 956, 54 Stat. 1739, 1745) states in pertinent part:

> The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or destination of the cargo. * * *

In contending (Pet. 9) that the decision below violates Article XIV of the treaty, petitioner assumes that the granting of liens upon a vessel and the ordering of their priorities constitutes "treatment" of the vessel under this provision. From this, petitioner argues that the treaty requires that the same liens, with the same priorities, be provided against Liberian flag vessels as are provided against United States vessels.

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[1] In 1968, the Act was amended to give masters of American vessels liens for wages of the same priority as seamen's wage liens. 46 U.S.C. (Supp. V) 606.

The Department of State has advised us that it disagrees with this interpretation of the treaty. In its view, the requirement in Article XIV that the foreign flag vessel be accorded the same treatment as national vessels "irrespective of the port of departure of the vessel, or the port of destination" indicates that the primary concern of the treaty is with laws affecting on-going shipping activity rather than the collection of debts arising out of such activity. Article XIV thus does not deal with wage liens and the "same treatment" concept it adopts is inapplicable to questions of lien priority. The Department of State has also advised us that the negotiating history of Article XIV and of similar provisions in other United States Friendship, Commerce and Navigation treaties bears out this interpretation. This history indicates that the principal purpose of the provision regarding treatment of vessels is to provide equality with respect to charges and regulations; there is no indication that the requirement of identical treatment was intended also to extend to the rights and remedies that might apply upon liquidation of debts against vessels. See, *e.g.*, Hawkins, *Commercial Treaties and Agreements*, pp. 34–44 (1951).

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1970.

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